

Judge: Oregon farmer liable for Clean Water Act violation

Federal government claims riverbank stabilization was unlawful

By MATEUSZ PERKOWSKI
Capital Press

An Oregon farmer should be held liable without a jury trial for violating the Clean Water Act by stabilizing a riverbank, according to a federal judge.

U.S. Magistrate Judge Thomas Coffin has agreed with the U.S. Environmental Protection Agency that “ample evidence” shows farmer Bill Case of Albany, Ore., broke the law by working below the North Santiam River’s ordinary high water mark.

The farmer hasn’t proven “a reasonable jury could find a serious injustice had been committed” in holding him



File photo

Bill Case, a farmer near Albany, Ore., points to the North Santiam River, which abuts his property. A judge has ruled Case should be held liable for violating the Clean Water Act for stabilizing a riverbank.

liable, Coffin said.

Because there is no question regarding a “genuine issue of material fact,” the issue can be resolved on “summary judgment” by a judge instead of a jury, he said.

The judge also rejected the argument that Case should

not be held liable because he didn’t know a Clean Water Act permit was necessary, government officials had been aware of the work, and he had relied on the federal government’s advice when stabilizing the riverbank.

Although the farmer “pre-

sented sufficient evidence” that these elements were satisfied, he didn’t show the government had committed “affirmative misconduct” — such as a “deliberate lie” or a “pattern of false promises” — as required by legal precedent, Coffin said.

Under the Clean Water Act, it’s illegal to discharge material below the ordinary high water mark of a navigable water without a permit. It carries penalties of up to \$37,500 per day of violation.

The U.S. Environmental Protection Agency filed a lawsuit against Case in 2016, claiming he violated the statute by placing large “riprap” rocks along the river in 2009 and later expanding levees in 2012 and 2013.

The judge said that Case’s own photos indicate that fill material was placed beneath the North Santiam river’s ordinary high water mark during the 2009 stabilization,

but there’s no evidence the government approved him going below that level.

Case also didn’t provide evidence, apart from testimony, that the 2012 and 2013 work occurred above the ordinary high water mark, Coffin said.

The government, meanwhile, had sufficient evidence the levee improvements occurred below that level, he said.

“Although Mr. Case may have been unaware that the areas in which he worked and the types of changes to the dike he performed were subject to permit requirements, the CWA imposes strict liability upon its violators,” the judge said.

While the magistrate judge has found that Case should be held liable, that is not the final word on the matter. His recommendation has now been referred to U.S. District Judge Ann Aiken.

Case said he plans to challenge the recommendation and is also negotiating with EPA about mitigation work to the riverbank.

The U.S. Army Corps of Engineers never mentioned he’d have to stay above the ordinary high water mark when stabilizing the riverbank, Case said.

“The only thing they said was stay out of the river,” he said.

Case said it’s implausible that he’d document the stabilization work with photos if he thought the work was unlawful.

“We weren’t trying to hide anything, we were just doing what they told,” he said.

A jury would likely have understood the situation and thrown out the lawsuit, which is why the judge didn’t like that option, Case said. “You get a judge on the side of the EPA, he’s going to go in that direction.”

Compensation to ranchers small part of Washington’s \$1.27M wolf budget

By DON JENKINS
Capital Press

Washington ranchers received \$3,700 in compensation last year for livestock attacked by wolves, out of the \$1.27 million the Department of Fish and Wildlife spent on wolves.

The department’s total spending, contained in a recently released report on wolf recovery, was in line with previous years. Wolf-related expenditures have topped \$1 million a year since at least 2015, the year the department began disclosing the figure in annual reports.

The department also spent money to protect livestock and to cull two packs that were attacking cattle.

Ranchers are eligible for compensation for wolf attacks confirmed by the department. Ranchers can also apply for payments for missing or underweight livestock, or for low pregnancy rates caused by wolves harassing herds.

Two ranchers were compensated for direct losses last year. No rancher filed a claim for indirect losses.

Cattle Producers of Washington President Scott Nielsen said the low payouts do not reflect the damage wolves inflict on individual producers.

“Man, when you’re the affected producer, it becomes pretty bad pretty fast,” he said.

Nielsen said that some ranchers are reluctant to go through submitting a claim for indirect losses. He also said that confirmed depredations understate losses.

“Wolves killed a heckuva lot more (livestock) than the department says they did,” he said.

The department last year confirmed that wolves killed eight cows or calves and injured five others. The department confirms attacks when enough flesh of the animal remains to see wolf-inflicted wounds.

Stevens County sheep rancher Dave Dashiell said that he remains unhappy with how the department handled his claim for indirect losses in 2014.

“It’s a pain in the (rear) to get any money out of them,” he said.

The department confirmed that wolves killed 28 of Dashiell’s sheep and shot one wolf in response in 2014. Dashiell said he was soon compensated for those sheep, but it took nearly two years to



Washington DFW

A calf suffers from a gaping wound inflicted by wolves in Washington. The Department of Fish and Wildlife spent \$1.27 million on wolf-related activities in 2017, of which \$3,700 went to compensate ranchers for dead or injured livestock.

receive payment for some 300 sheep that were never found.

“Then it was half to two-thirds what they were worth,” he said. “They didn’t pay any attention to my figures.”

To be eligible for compensation, a producer must have agreed to use department-approved ways to prevent depredations. The producer must provide sales records for the previous three years and declare in writing he has exhausted all other sources of compensation from non-profit groups.

“We’ve heard from folks that it’s cumbersome,” Fish and Wildlife wolf policy coordinator Donny Martorello said.

He said the department plans to talk to producers about revising the process. “We’re open to having that conversation,” he said.

The department paid out more in compensation in 2016 — \$20,037 for direct losses to six producers and \$65,648 for indirect losses to two producers. They are the only two claims ever paid by the department for indirect losses caused by wolves.

Last year, the department spent \$306,000 to share costs with 37 producers on non-lethal measures, such as range riders, to protect herds. This was down from \$410,000 and 54 producers in 2016.

The department spent \$15,087 to kill two wolves in the Sherman pack. The department last fall preliminarily estimated spending less than \$7,000 to kill one wolf in the Smackout pack. The department has not provided a final number.

Oregon wolf population continues to grow

By GEORGE PLAVEN
Capital Press

SALEM — Oregon wildlife officials counted at least 124 wolves at the end of 2017, an 11 percent increase over the year end total for 2016, according to the latest annual report released April 12.

The survey, which is conducted by the Oregon Department of Fish and Wildlife, is not a true population estimate but documents the minimum number of wolves across the state based on verified evidence such as visual sightings, tracks and photographs.

ODFW will present an overview of the findings at the next Fish and Wildlife Commission meeting April 20 in Astoria.

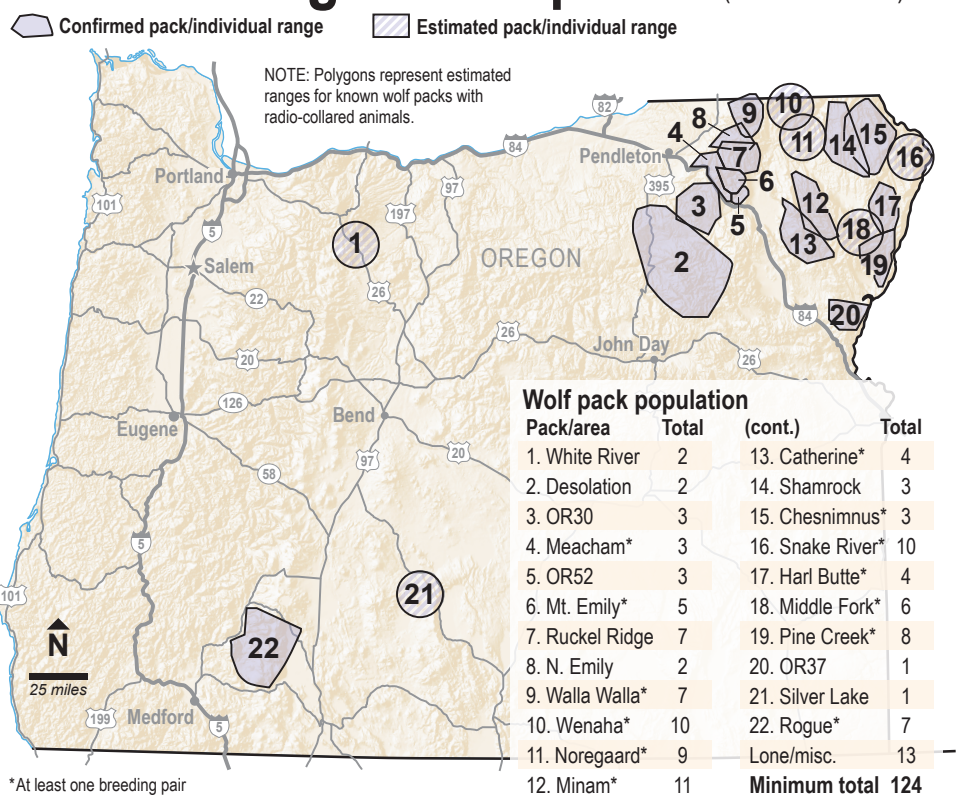
“The wolf population continues to grow and expand its range in Oregon,” said Roblyn Brown, ODFW wolf program coordinator. “This year, we also documented resident wolves in the northern part of Oregon’s Cascade Mountains for the first time.”

Most wolves in Oregon remain clustered around the northeast corner of the state, though several packs and known wolf territory can also be found in Wasco, Klamath and Lake counties. Statewide, Oregon now has 12 wolf packs, 11 of which were successful breeding pairs, meaning that at least two adults and two pups survived to the end of the year.

Wolf reproduction was the highest recorded in 2017 since the species returned to Oregon, with pups being born in 18 groups — a 50 percent increase over 2016. Though they did not meet the definition of a breeding pair, reproduction was confirmed in the Chesnimnus, Harl Butte, Meacham, North Emily and Shamrock packs, as well as the OR-30 and OR-52 pairs.

Gov. Kate Brown said she is encouraged by the continued recovery of Oregon wolves, though ongoing conflicts with poachers and livestock remain troublesome.

Known Oregon wolf packs (As of Dec. 2017)



Source: Oregon Dept. of Fish and Wildlife. Alan Kenaga/Capital Press

“Despite this good news, ongoing issues of poaching and livestock depredation must be carefully considered as we explore more effective management and conservation practices,” Brown said.

Though ODFW removed wolves from the state endangered species list in 2015, it remains illegal to shoot a wolf except in limited circumstances, such as in defense of human life or those caught in the act of chasing livestock. Wolves remain federally protected west of highways 395, 78 and 95.

ODFW reported four cases of wolves killed illegally in 2017. Three cases are still under investigation. The fourth, in Union County, involved a wildlife trapper who shot a wolf he found in one of his traps. David Sanders Jr., 58, pleaded guilty to one count of using unbranded traps, and was sentenced to 24 months bench probation, 100 hours of community service and a \$7,500 fine.

The Union County District Attorney’s Office agreed to dismiss one count of ille-

gally shooting a special status game mammal, though Sanders did have his hunting and trapping license suspended for 36 months and agreed to pay an additional \$1,000 penalty to ODFW.

In all, 13 wolf deaths were recorded in 2017 — 12 of which were caused by humans. ODFW issued lethal take permits that resulted in four wolves being shot from the Harl Butte pack in Wallowa County, and one from the Meacham pack in Umatilla County, to try and curb livestock depredations. Lethal take is allowed under Phase III of the Wolf Management and Conservation Plan in Eastern Oregon.

Meanwhile, OR-48 from the Shamrock pack was unintentionally killed by an M-44 cyanide trap that had been set by USDA Wildlife Services on private land; a pup from the Ruckel Ridge pack was killed by a livestock protection dog; and OR-30 was shot by an elk hunter in Union County who claimed he was acting in self-defense. The hunter, 38-year-old Bri-

an Scott, was not charged with a crime.

Sean Stevens, executive director of the Portland-based environmental group Oregon Wild, was sharply critical of poachers and ODFW killing wolves. Most recently, the agency approved killing two more animals from the Pine Creek pack in Baker County for preying on cattle.

“The wolf population is stagnant because poachers and ODFW agents are killing more wolves — this despite the fact that ODFW admits livestock depredations are down from last year,” Stevens said. “It demands accountability from an agency that insists on killing more wolves every year.”

The annual wolf report shows confirmed livestock depredations decreased from 24 in 2016 to 17 in 2017. Those cases involved 11 calves, one llama, one alpaca and 23 domestic fowl.

Quinn Read, Northwest director for the group Defenders of Wildlife, said the evidence shows Oregonians can co-exist with wolves.

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Item/description (Source: USDA, NASS; NOAA)	Ore.	Wash.	Idaho	Calif.
• Days suitable for fieldwork (As of April 15)	3.9	3.4	4.2	6.1
• Topsoil moisture, surplus	15%	12%	33%	10%
• Topsoil moisture, percent short	18%	5%	3%	25%
• Subsoil moisture, surplus	6%	7%	22%	10%
• Subsoil moisture, percent short	34%	10%	6%	25%
• Precipitation probability (6-10 day outlook as of April. 17)	33-50% below	40-50% below	33-40% below/ Normal (South)	40-50% below/ Normal (South)

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